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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: April 1, 2020)
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Case No.: PSH-21-0035

Issued: June 24, 2021

Administrative Judge Decision

Janet R. H. Fishman, Administrative Judge:

This Decision concerns the eligibility of XXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

I. Background

A DOE contractor employs the Individual in a position that requires him to hold access authorization. On or about December 1, 2018, the Individual was charged with Driving While Intoxicated (DWI). Ex. 10 at 1. The Individual self-reported the incident, after which the Local Security Office (LSO) requested the Individual complete a Letter of Interrogatory (LOI), which the Individual signed and submitted on January 6, 2020. Ex. 11. Based on the information provided, the LSO requested that the Individual be evaluated by a DOE-contractor Psychiatrist (DOE Psychiatrist), who subsequently issued a report of his findings (Report). Ex. 12. After receiving the DOE Psychiatrist's Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual, informing him that he was entitled to a hearing before an Administrative Judge in order to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of three other witnesses, along with six exhibits, marked as Exhibits A through F (hereinafter cited as "Ex.") *See* Transcript of Hearing, Case No. PSH-21-0035 (hereinafter cited as "Tr."). The DOE Counsel presented the testimony of one witness and submitted fourteen exhibits marked as Exhibits 1 through 14.

II. The Notification Letter and the Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline G of the Adjudicative Guidelines. Ex. 1. Under Guideline G (Alcohol Consumption), "[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Adjudicative Guidelines at ¶ 21. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are "alcohol-related incidents away from work, such as driving while under the influence[.]" and "[d]iagnosis by a duly qualified medical or mental health professional . . . of alcohol use disorder." *Id.* at ¶¶ 22(a), (d). With respect to Guideline G, the LSO alleged that (1) the DOE Psychiatrist diagnosed the Individual with Alcohol Use Disorder (AUD), Mild, in early sustained remission without evidence of rehabilitation or reformation; (2) On December 1, 2018, the Individual was charged with DWI after he consumed 24 ounces of beer and a half pint of whiskey. On this occasion, the Individual had a Blood Alcohol Content (BAC) of .16 and admitted that he was intoxicated. Ex. 1 at 1.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact

The Individual does not challenge the basic facts listed in the Notification Letter; namely that, in December 2018, he was charged with DWI. Ex. 10 at 1. In his LOI, the Individual indicated that on that night, he consumed twenty-four ounces of beer and a pint of liquor over the span of five hours. Ex. 11 at 1. On his way home, the Individual had “struck a mailbox and a wooden post,” vomited, and passed out, at which time a passerby called for an ambulance after finding the Individual unresponsive. Ex. 11 at 1; Ex 12 at 2. After the Individual was taken to the hospital, he was placed under arrest in the early morning hours of December 2, 2018. *Id.* The DWI charge was ultimately reduced to a misdemeanor and the Individual received a fine. Ex. 7 at 1; Ex. 12 at 2.² The Individual registered a .16 BAC on the night in question. Ex. 11 at 2. The Individual also stated in his LOI that he had not consumed alcohol since the incident. *Id.* at 4, 6.

A DOE Psychiatrist evaluated the Individual in his office on February 11, 2020. Ex. 12 at 1.³ The Individual Informed the DOE Psychiatrist that he “realized that avoiding use of alcohol made him feel better, was better for his job, and he didn’t have to worry if he were ever impaired.” *Id.* at 3. The DOE Psychiatrist diagnosed the Individual with “Mild [AUD] in early sustained remission.” *Id.* at 8. Although the DOE Psychiatrist could not find adequate evidence of rehabilitation, he did note that the Individual had begun the process of reformation, recognized that his alcohol use was maladaptive, and had stopped consuming alcohol. *Id.* However, the Individual had not, at the time of the evaluation, sought treatment for his maladaptive alcohol use. *Id.* A minimum of six months of sobriety was recommended for the Individual, as was participation in the Employee Assistance Program (EAP), and six months of Alcoholics Anonymous (AA) at a rate of three meetings per week with documented work on the steps with his AA sponsor. *Id.*⁴

V. Hearing Testimony

The Individual did not deny the basic facts of what transpired in December 2018. He testified that on the day in question, he received an invitation from a friend to accompany him on a social outing. Tr. at 19-20. The Individual stopped to purchase a bottle of alcohol on his way to the party, a liquor with which he was unfamiliar. Tr. at 20. While at the party, the Individual consumed the bottle he had brought with him, in addition to two beers, over the span of four hours, resulting in his clouded judgement. Tr. at 20-21.⁵ The Individual left the party in an impaired state without having heard

² Based on determinations made during a May 2019 hearing, no action was taken against the Individual’s driving record. Ex. 6 at 1.

³ The DOE Psychiatrist’s evaluation of the Individual included a Phosphatidylethanol (PEth) test, which was negative. Ex. 12 at 5. The PEth test detects alcohol use during the previous 28-days.

⁴ The Individual submitted AA Attendance Verification logs that indicate he regularly attended AA meetings from August 3, 2020, to May 11, 2021, and provided a December 2, 2018, certificate indicating he had been sober for two years. Ex. B; Ex. C. Credible testimony indicates that the certificate was mistakenly dated with the Individual’s sobriety date, rather than the actual day the certificate was awarded. Tr. at 43-44. A character letter explains that the author began working on the twelve steps in August 2020, and confirmed the Individual’s participation chairing meetings and sharing “his experiences, strength, and hope[.]” Ex. A.

⁵ As provided above, the Individual stated in his LOI that he consumed the alcohol over the span of five hours but testified that the alcohol was consumed within approximately four hours. Ex. 11 at 1; Tr. at 20.

any objections from others. He then drove intending to arrive at his childhood home approximately ten minutes away. Tr. at 21. While on the way, the Individual pulled over to the side of the road, became unconscious, and woke up in the hospital in the presence of law enforcement, family, and friends. Tr. at 21-22. At that point, he was charged with a DWI and reported the incident to the LSO the following Monday. Tr. at 22. The Individual was evaluated by a DOE Psychiatrist the next month. Tr. at 24.

The Individual testified that he has recognized the difficulties alcohol has caused in his life, last consumed alcohol on December 2, 2018, and feels that “[s]obriety is what’s right for [him].” Tr. at 25-26, 44. At the time of the hearing, he had been abstinent for over two years, and credits the AA program, which he had been attending for approximately ten months, and the EAP in assisting him with continued sobriety. Tr. at 27, 46. The Individual began attending AA meetings on August 3, 2020, chairing meetings on Wednesdays, and had attended a total of three EAP sessions. Tr. at 28-29. Appreciating the fellowship and comradery, the Individual “plan[s] on staying with the [AA] program[,] and intends to continue to abstain from alcohol” Tr. at 31-32, 48-49. Although the Individual will accompany others to bars, he will refrain from consuming alcohol and offer others safe transportation back home, “hav[ing] no temptation at all to drink alcohol.” Tr. at 34.

The Individual also testified as to the close relationship he has with both of his parents, and that he spends a good portion of time together with his father. Tr. at 14-15. After describing his collegial work relationships, he asserted that he has never reported to work in a hungover or impaired state. Tr. at 18-19.

Testimony offered from the Individual’s witnesses, his father and friends, indicate they were all aware of the incident that transpired in December 2018. Tr. at 61-63, 78, 88.⁶ The Individual’s father testified that when he spoke to the Individual immediately after the incident, the Individual stated that he “didn’t think he would ever drink again.” Tr. at 64. To his knowledge, the Individual has abstained from alcohol, and he expressed pride in his son “for taking whatever steps he felt like he needed[.]” Tr. at 64, 70. The Individual’s coworker denied having ever seen the Individual report to work in a hungover state, and has never seen him consume alcohol, much less drunk. Tr. at 75, 77-78, 82. She described the Individual as “[v]ery reliable, trustworthy, honest, [and] loyal.” Tr. at 77. A fellow AA attendee spoke to the depth of the Individual’s participation in the AA meetings, and the Individual’s voiced desire to “be better[.]” Tr. at 87-88.

The DOE Psychiatrist confirmed that he diagnosed the Individual with AUD, Mild, and that the Individual had begun the reformation process but was not completely rehabilitated at the time of the evaluation. Tr. at 98-99. He went on to confirm that he had recommended six months of abstinence, six months of AA attendance at a rate of three meetings per week, participation in his employer’s EAP, and “evidence of working the steps with a sponsor.” Tr. at 99. The DOE Psychiatrist testified that the Individual has completed the requirements he set out, “demonstrated his rehabilitation as required,” overcome his fear of embarrassment, acknowledged his maladaptive alcohol use, and enlisted his family as support in his journey through sobriety. Tr. at

⁶ The Individual’s AA sponsor was offered the opportunity to testify anonymously but declined. He did, however, author a letter that was submitted as Exhibit A.

102-103.⁷ He opined that, so long as the Individual maintains his adaptive behaviors, his prognosis is good. Tr. at 103.

VI. Analysis

The Individual's DUI arrest and his diagnosis of AUD all raise security concerns under Guideline G of the Adjudicative Guidelines. The Adjudicative Guidelines provide that an individual may mitigate security concerns under Guideline G if "the individual acknowledges his or her pattern of maladaptive use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established patterns of modified consumption or abstinence in accordance with treatment recommendations." Guideline G at ¶ 23(b).

Admirably, the Individual recognized his maladaptive alcohol use and has taken commendable steps toward mitigating Guideline G concerns. The Individual quickly understood the detriment the DUI arrest posed to him and ceased his alcohol consumption before being given a formal recommendation to do so, and in fact, tested negative for alcohol when a PETH test was performed pursuant to the DOE Psychiatrist's evaluation approximately fourteen months after the incident in December 2018. Ex. 12 at 5; Tr. at 25-26. Not only is the record devoid of any evidence that the Individual has relapsed since his date of sobriety, but credible testimony also provides that the Individual enjoys strong support from his family, his friends, and his AA community. The Individual seamlessly incorporated AA into his life, and his enthusiasm and sincere participation in the program did not go unnoticed by his character witnesses. Further, the DOE Psychologist testified that, in terms of his recommendations and expectations for the Individual, "he has fulfilled all of them and is doing it in a continued way." Tr. at 103. He stated that the Individual "has demonstrated his rehabilitation as required." Tr. at 103.

The sweeping actions the Individual took to address the consequences of his alcohol misuse resulting in his DUI arrest, his ongoing abstinence, as well as expert opinion that the Individual has been rehabilitated from his AUD diagnoses, have mitigated the security concerns raised in the Notification Letter.

VII. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G of the Adjudicative Guidelines. After considering all of the evidence, both favorable and unfavorable, in a comprehensive, common sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve

⁷ The DOE Psychiatrist recommended that, among other things, the Individual participate in his employer's EAP. Ex. 12 at 8. The Individual submitted evidence indicating the EAP counselor's reluctance to provide information pertaining to the Individual's counseling records. Ex. E; Ex. F; Tr. at 27, 42-43. I issued a subpoena to the EAP counselor to produce counseling records by the close of business on June 18, 2021, and this subpoena was duly served on June 9, 2021. To date, I have not received the requested information. Although the DOE Psychiatrist stated that the Individual had "demonstrated rehabilitation as required," which was contingent upon the Individual completing the recommendations he had made in the report, the DOE Psychiatrist did also indicate that he would need the EAP counselor to "make a statement" that the Individual had completed the program. Tr. at 101-103. I do, however, find the testimony provided to be credible, and I am satisfied that the Individual did complete the mandated three sessions. Tr. at 27, 52-54.

the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should be restored. Either party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Janet R. H. Fishman
Administrative Judge
Office of Hearings and Appeals